

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
and Petition to Revoke Probation
Against:

PABLO G. CORTINA, M.D.
240-A Hospital Drive
Ukiah, CA 95482

Respondent.

Case No. D1-1994 40553

OAH No. N 1999080267

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby
adopted by the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on December 17, 1999.

IT IS SO ORDERED.

DATE: November 17, 1999



Ira Lubell, M.D., President
Division of Medical Quality

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PROPOSED DECISION

On September 28, 1999, in Santa Rosa, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Ronald V. Thunen, Jr., Deputy Attorney General, represented complainant.

Christopher R. Miller, Attorney at Law, Lanahan & Reilley LLP, 3558 Round Barn Boulevard, Suite 300, Santa Rosa, California 95403, represented respondent Pablo G. Cortina, M.D., who was present for all phases of the hearing.

Evidence was received, arguments were made, the record was closed and the matter was deemed submitted on September 28, 1999.

FACTUAL FINDINGS

1. Complainant Ron Joseph, Executive Director, Medical Board of California ("complainant") made the Accusation and Petition to Revoke Probation in his official capacity.

2. Respondent Pablo Garza Cortina ("respondent") holds physician and surgeon's certificate number G47561 as issued by the Board on June 14, 1982.

3. On February 4, 1998, complainant served upon respondent an Accusation against his certificate. On June 30, 1998, respondent signed the Acceptance of the Stipulated Settlement document, which led to a decision. On August 24, 1998, a decision on the Accusation against respondent's license became effective that ordered respondent's certificate be revoked, with revocation stayed while respondent's certificate was subject to a two year term of probation under specified terms and conditions. A copy of the decision is affixed hereto as Attachment "A," and incorporated herein by reference.

4. On June 2, 1998, in case number CR 97-000368VRW, the United States District Court, for the Northern District of California, on his plea of guilty, convicted respondent of violating Title 26 United States Code section 7206(1) [Filing False Tax Return Under Penalty of Perjury], a felony.

The crime for which the federal court convicted respondent is an offense that is substantially related to the qualifications, functions and duties of a physician and surgeon.

5. Before the June 1998 conviction date, on January 20, 1998, respondent signed a court pleading captioned: "Application for Permission to Enter a Plea of Guilty." Respondent's private attorney--George G. Walker--signed a Certificate of Counsel, which expressed the lawyer's assessment that respondent's plea of guilty "is voluntarily and knowingly made."

Earlier on December 24, 1997, respondent had signed a Plea Agreement in case number CR 97-0368 wherein respondent stipulated to the facts and circumstances of his acts that led to the conviction. Among other things, the plea agreement specified that:

a. During the calendar years 1990 - 1992 [respondent], a physician owned and operated his own medical practice. During this timeframe [respondent] had two offices, one in Healdsburg, California and one in Ukiah, California. Lisa Peterson, a registered nurse assisted [respondent] in running both the administrative and medical portions of his practice.

b. During the calendar years 1990-1992 [respondent] did not report \$208,559, \$451,376, and \$357,530 respectively, of gross business receipts on his income tax returns ("unreported income"). Those monies represent payments made by patients and insurance companies for services rendered by [respondent].

During the same years [respondent] caused Lisa Peterson to open several bank accounts in her name, the purpose of which

was to deposit business receipts from [respondent's] medical practice. [Respondent] did in fact cause Lisa Peterson to deposit a substantial portion of his business receipts into those bank accounts during 1990-1992, rather than his business bank account, which remained open during those years....

c. [Respondent] caused [Lisa] Peterson to report only a portion of his business receipts to his bookkeeper ..., with the intention that his true amount of gross receipts would not appear on his financial statements and ultimately on his income tax returns....

d. When [respondent] signed his 1991 income tax return (Form 1040), under penalties of perjury, he was aware that the unreported income was not reflected on the return, and that the return was therefore false. In all instances the [respondent] acted knowingly, intentionally, and willfully, and not by accident, mistake, or other innocent reason.

6. Respondent is compelling and credible in providing an account of his criminal acts and omissions of the federal crime of not having reported the correct amount of income in tax returns for three years ending in 1993.

Since beginning his medical practice in Ukiah in 1990, respondent had been very busy. He participated in the delivery of between 300 and 400 babies per year. He also performed another 300 surgical procedures. He saw over the subject period of time up to 60 patients a day from 8 o'clock in the morning until 9 o'clock at night. There were occasions when he saw patients on Saturday mornings.

In part due to his busy schedule, respondent relied upon support personnel in his offices. His staff included Ms Lisa Peterson, who unfortunately was respondent's live-in girlfriend. Respondent extended inordinate trust in the skills of Ms Peterson and a bookkeeper. Additionally he had a fear of having the operating account for his medical offices being attached with a lien through state family law court proceedings by his former wife to whom he owed thousands of dollars in spousal and child support.¹ The stressful circumstances led respondent to pursue an ill-advised course of creating multiple bank accounts. Through the ill conceived plan, which was pursued in part, to frustrate his former wife's collection action, and driven by a rationale of having money available to pay business operating costs, respondent entered into a scheme that resulted

¹ Respondent and his former wife, Kim, were divorced in 1989/1990. Respondent was under an order to pay child support of \$4,000 per month and spousal support of \$2,000 per month.

in real property and thousands of dollars going into the name of his office manager/office nurse/girlfriend – Ms Peterson.²

7. Respondent did not go to trial on the federal charges of intentional evasion of income tax, among other things, due to his depleted financial condition that did not allow him to secure \$125,000 to pay estimated attorney fees to take the matter through the course of a jury trial.

8. As a consequence of his guilty plea, the United States District Court sentenced respondent. The court committed respondent into the custody of the United States Bureau of Prison for a term of twelve (12) months.³ The court recommended that respondent serve the first six months in actual custody and that respondent spend the remaining six months in a community confinement facility close to his home.

The court's sentencing order also instructed that upon his release from prison that respondent shall be under "supervised release" for a term of one (1) year.

Additionally, the court imposed special terms pertaining to his supervised release, including that respondent pay restitution to the Internal Revenue Service in the amount of \$259,997; that respondent pay a fine of \$30,000 under Title 18 United States Code section 3572; that respondent participate in a psychological treatment program; that respondent pay all child support payments imposed by state court; that respondent file truthful and timely income tax returns; and, that respondent provide the criminal conviction probation officer with access to any financial information pertaining to respondent.

9. After he received the sentence of prison confinement for a period of six months, respondent hoped to postpone for up to a year the commencement date for his incarceration.

Respondent is credible that he implored his criminal defense attorney to formally petition the court for a postponement of his date of imprisonment. During the period that he hoped to postpone his actual incarceration, respondent planned to take a vacation to visit Harlingen, Texas, and to fulfill portions of the terms and conditions of the Medical Board probation on discipline against his medical license.

² Following respondent's indictment and conviction, Ms Peterson avoided prison time and ended up with thousands of dollars that had been earned through respondent's medical practice.

³ The court's order of imprisonment set out relative to the six months of community confinement to be grounded in reasoning that such community confinement program "would permit [respondent] to continue his medical practice, earn his livelihood and meet his financial obligations."

Respondent's testimony is supplemented and explained by a letter,⁴ dated September 3, 1999, by Mary S. Coughlin, Attorney at Law, of Calcina & Coughlin. In writing the Federal Adult Probation Department, Ms Coughlin set out that: "[respondent] had been advised by his former attorney that a motion would be filed to extend his time to surrender last September. For reasons that have never fully been explained to me, the motion was not filed and [respondent] was advised to report to a facility in Las Vegas on 48 hour notice...."

10. At the time that respondent entered into the stipulated terms for discipline against his medical license, Attorney-at-Law Christopher Miller represented him. Respondent, waives his attorney-client communication privilege, by conveying at the hearing that after he signed the agreement with the Medical Board, Mr. Miller advised respondent that he had to report the federal court conviction to the Medical Board. In anticipation that his criminal defense lawyer would complete his provision of professional services associated with the federal conviction, respondent gave Mr. Miller the name and telephone number of his criminal defense attorney so that the criminal defense lawyer could provide the Medical Board with the specifics of the conviction, the sentence and the terms of probation. Respondent had the distinct impression that his criminal defense lawyer had informed the Medical Board of the federal conviction. Moreover, respondent believed, through advice from Mr. Miller, that both the United States District Court clerk and the United States Attorney's office had an obligation to inform the Medical Board of respondent's conviction.

11. Even though he had an obligation under Business and Professions Code section 802.1, respondent did not report to the Medical Board, or its personnel, within the time prescribed by statute, the fact of the filing by the United States Attorney of criminal charges on December 31, 1997. Nor did respondent report to the Medical Board, or its personnel, within the time prescribed by statute, the fact of the United States District Court's conviction and sentencing of him on June 2, 1998.

12. Respondent's demeanor and his manner of testifying at hearing are consistent with respondent being credible when he conveys that he had no conscious intention to conceal his federal tax evasion conviction from the California Medical Board. However, respondent's lack of a rational explanation for his series of grave omissions suggests that he may have a psychiatric malady that prevented him from facing up to the terrible circumstances into which he placed himself and persons who depended upon him, and disclosing his problems to the investigator.

13. After spending six months in prison, on or about March 11, 1999, respondent gained his release from incarceration in a federal prison in Nevada. Under the terms of his sentencing, respondent moved into a supervised custody facility in San Francisco.

⁴ Received and weighed under Government Code section 11513, subdivision (d).

Before respondent surrendered to the prison in Nevada, he had been led to believe that he would be able to serve the six month term of home detention at a facility close to Ukiah so that he could perform medical services in order that he might resume a monetary income flow. However, upon his release in March 1999, respondent's parole officer informed him that the United States Bureau of Prisons had ended a contract with an independent contractor which had provided "home confinement" monitoring services for a federal halfway house in Mendocino County. Accordingly, the parole agent informed respondent that he had to stay at a halfway house in San Francisco.

14. In San Francisco, during the six month period of supervised detention following his release from prison on March 11, 1999, respondent could not secure employment as a medical doctor. He worked during that time as a sales clerk for Circuit City, a ticket handler at a theatre, an employee of Goodwill Industries, and as a landscaper in San Jose.

15. Since the federal charges were filed against him, and the resultant conviction on the charges, for filing a false tax return that under reported his business income, respondent has suffered greatly. Among other things, he advances that he had lost all material possessions, which he had acquired over his years of medical practice. In November 1997, respondent sold a house for \$470,000; yet, he realized no proceeds from the sale as the profit went to his former wife and to Lisa Peterson. In March 1997, he sold a medical building for the amount of the mortgage debt on the building.

Above all, respondent perceives that due to his absence from the Ukiah area following his incarceration he "let a lot of people down."

Matters in Aggravation

16. Before surrendering to the federal prison in September 1998, respondent knew that he had to report to the Medical Board the fact of his criminal conviction of having filed a false tax return. However, respondent unduly relied on a belief that his criminal defense lawyer would inform the Medical Board of the fact of his criminal conviction.

17. While in prison, although he wrote a letter to the Medical Board's Probation Unit that expressed an intention to return to the practice of medicine in approximately March 1999, respondent failed to write a letter to the Medical Board that conveyed the fact of his criminal conviction or his incarceration in federal prison.

18. As a result of the disciplinary action against his license, respondent was to have commenced on August 24, 1998, a two-year period of probation. On that date,

respondent engaged in a telephonic discussion⁵ with Everette Gremminger, an investigator of the Medical Board's Probation Department ("the investigator"). The purpose of the August 24, 1998, contact between the investigator and respondent was, in part, to enable the investigator to impress upon respondent the serious nature of the probation against his license to practice medicine. The investigator thoroughly discussed with respondent the written terms and conditions of probation. During the conversation with the investigator, respondent did not mention the federal conviction for filing a false tax return. Before ending the telephone contact, the investigator arranged with respondent a face-to-face meeting on September 10, 1998.

The scheduled meeting did not take place on September 10, 1998.

In conferring by telephone with the Medical Board's investigator, respondent was not direct in communicating the fact of his criminal conviction and the matter of his actual incarceration in federal prison.

19. Two days before being confined in a federal prison near Las Vegas, Nevada, on September 9, 1998, respondent telephoned the investigator to inform the Medical Board's Probation Department that he planned to take a leave of absence from his professional pursuit as a physician and surgeon. Respondent conveyed that he planned to go to Texas with his then girlfriend Lisa Wallace. Although respondent had an impression that his criminal defense lawyer was seeking a postponement of his date for voluntary surrender to the federal prison system, he did not inform the Board's Probation Department representative of any aspect of the criminal conviction and the impending prison confinement. Nor, did respondent tell the investigator that the court imposed fine of \$30,000 and the order of restitution to the Internal Revenue Service of \$259,000 prevented him from paying the Business and Professions Code section 125.3 costs of the Medical Board.

On September 11, 1998, respondent surrendered to the federal prison.

20. Between September 11, 1998, and March 1, 1999, respondent did not send any written communication to the investigator. On March 2, 1999, the investigator received from respondent a letter that indicated his intention to return to medical practice on approximately March 11, 1999. However, the letter did not indicate that respondent was in federal prison.

21. In mid March 1999, Mrs. Lisa Cortina (nee Wallace) wrote a letter to the investigator to transmit correspondence by Vincent Valente, M.D., regarding his willingness to serve as respondent's monitor under the terms and conditions of the probation against respondent's license.

⁵ The investigator made his initial preliminary telephonic contact with respondent on August 13, 1998. The conversation was a brief introductory exchange.

22. Respondent did not disclose the fact of his conviction and imprisonment until a date in 1999. Respondent knew or reasonably should have known that he was not able to visit any person in the State of Texas immediately before he was imprisoned on September 11, 1998. Respondent misled the investigator as to the reason that he stopped his practice of medicine. Respondent was not candid in explaining his inability to pay the Medical Board \$4,000 as the costs of investigation and prosecution under Business and Professions Code section 125.3 as associated with the initial discipline against his license.

Respondent's omissions in the context of not being totally forthright with the investigator reveal his dishonesty that involved false statements to the Medical Board.

23. Christine A. Magnasco, a United States Probation and Parole Officer, first met respondent in February 1998. The meeting was in conjunction with the preparation of a report to the court on the matter of sentencing respondent in light of his guilty plea.

On April 15, 1999, the Medical Board's investigator first informed Officer Magnasco that respondent's physician's license had been disciplined and that his license was in a state of probation for two years.

On June 1, 1999, respondent informed Officer Magnasco that he believed that she would have discovered through her sources and her research the matter of the discipline against his license.

24. Respondent has not fulfilled the terms of probation associated with the stipulation and decision that imposed discipline against his license as a physician and surgeon.

Respondent provides an inadequate explanation as to his failure to pay the Medical Board the costs of investigation and prosecution as associated with the initial discipline against his license. As a first installment payment, respondent was to have paid \$4,000 within ninety days of August 24, 1998, which was the effective date of the decision. When the first installment payment was due before November 23, 1998, although in prison respondent made no attempt to inform the investigator of the actual reason for his lack of money to pay his lawful debt under Business and Professions Code section 125.3. In March 1999, the investigator received from respondent a handwritten letter that further asked to postpone payment of the \$4,000 owed by respondent to the Medical Board. Respondent offered to pay \$250 per month to satisfy the debt. However, as of the hearing of this matter in late September 1999, respondent offers no evidence of having paid any amount towards the cost debt.

Matters in Mitigation

25. Upon the request of the investigator of the Medical Board's Probation unit, on September 9, 1998, respondent sent to the Medical Board a letter, which conveyed that he would take a leave of absence from the practice of medicine.

Complainant provides no evidence that respondent should have had any understanding other than that the letter he sent to the investigator was a request that the Division of Medical Quality take action under paragraph 13 of the Stipulated Settlement that led to the Decision that disciplined his license. Respondent suggests that he believed that he was no "longer... subject to the terms and conditions of probation" during the period of September 10, 1998, and a date in the spring of 1999.

26. Kathleen M. Persky, M.D., is credible in her appearance at the hearing in this matter.

Dr. Persky is a fellow of the American College of Surgeons. She is a general surgeon, who has maintained for ten years a practice in Ukiah, California.

Dr. Persky had been respondent's colleague for a period of eight years. She assisted respondent in surgical procedures, and he has assisted her in surgery. She notes that she observed respondent to have developed outstanding surgical techniques. Dr. Persky found that respondent showed keen judgment in the operating room.

Importantly, Dr. Persky notes that respondent provided excellent service and care for "a difficult patient population in Ukiah." He willingly served with distinction the Spanish speaking patients who happened to have only Medi-Cal as a means of paying for physician services.

Dr. Persky views respondent as possessing highly commendable medical skill, judgment and compassion as an obstetrical and gynecological expert.

During respondent's absence due to his incarceration for income tax evasion, Dr. Persky notes that a void in quality physician care has manifest in the Ukiah community. She conveys that many Spanish speaking women patients, who had previously relied on respondent, have gone without receiving prenatal care due to their reluctance to see non-Spanish speaking physicians. Grave medical problems have arisen in the community due to respondent's absence in that some of those women who have avoided prenatal medical care have been rushed to hospital emergency rooms in the area.

According to Dr. Persky, notwithstanding his federal tax evasion conviction, respondent's reputation in the community for truthfulness is excellent. She observes that respondent's federal conviction for filing false tax returns would not affect his standing in the community as a learned, dedicated, sympathetic and skilled medical doctor.

The views of Dr. Persky regarding respondent's outstanding medical skills as an adept and compassionate physician are echoed in the written statements⁶ of six physicians and two nurses. The letters include glowing expressions of praise as: "[respondent] is a good physician who always was available to help in the emergency room, whether he was on call or not;" "[respondent] always answered my calls in a friendly, polite and professional manner... (H)e showed good professional judgment in dealing with patients and treated them with respect, and I could always depend on his knowledge and judgment in guiding my decisions"; "[respondent] has always impressed with me with his excellent knowledge base and his service to the community... He was the only obstetrician and gynecologist who serviced the Medi-Cal and Spanish-speaking community..."; "I have worked in the operating room with [respondent] for several years ... He has excellent surgical skills(,) good clinical judgement (sic) and gets along well with peers..."; "it would be a great loss for the Ukiah community and medicine in general if [respondent] was (sic) not given a chance to continue his work"; and "I found [respondent] to be knowledgeable & (sic) technically capable with good judgment."

27. Mrs. M. Y. is compelling in her testimony at the hearing. She has been a resident of Ukiah for 32 years.

Mrs. Y. was a patient of respondent for a period of six years. During that time respondent performed two major surgeries and one minor surgery upon her. Also respondent was the physician who aided in the delivery of four grandchildren of Mrs. Y.

Mrs. Y. deems respondent to be an excellent physician who exhibits rare qualities of being respectful and caring toward her, her family members and other community members. She is exceedingly comfortable with respondent who showed keen listening skills. Unlike other physicians with whom she has sought treatment, respondent was never rude or impatient with her.

During the years that she knew of his practice in the Ukiah area, Mrs. Y. referred to respondent many women of Hispanic ancestry who were monolingual in Spanish. Many of those women are reluctant to seek treatment from non-Spanish speaking doctors. Mrs. Y. knows of no other Spanish-speaking doctor in the Ukiah area.

28. Mrs. M. C., a native born Ukiah resident, is the daughter of Mrs. Y.

⁶ The letters received in evidence under Government Code section 11513, subdivision (d), are to supplement and explain the evidence of respondent's abilities and qualities as assessed by other health care professionals. Recent letters are by: Marvin Trotter, M.D.; Ace Barash, M.D.; Robert Gitlin, D.O.; David DeBooy, M.D.; Nabil Girgis, M.D.; Vincent P. Valente, M.D.; Eleanor Simmons, R.N.; and Scott Wallace, CFRN, CCRN.

Mrs. C delivered two children with respondent's assistance. Her youngest child had a very difficult delivery and was born prematurely; yet, respondent performed medical assistance that greatly comforted Mrs. C. Mrs. C views respondent's performance as a medical doctor as having been "great." Moreover, Mrs. C recalls respondent as being very "caring," who had splendid interpersonal skills so that even her husband relates very well with respondent.

Mrs. C is credible when she relates that respondent is sorely missed by persons in Ukiah of both Hispanic and non-Hispanic ancestry.

29. Respondent's conviction was grounded upon acts that occurred between 1991 and 1993.

Complainant provides no evidence that respondent has been convicted or arrested because of any breach of law since 1993.

30. Respondent is credible that he did not have knowledge of the obligation that under the law he had to report within 30 days the fact of the information (indictment) and the criminal conviction that he suffered.

31. Respondent is compelling that he believed that the prosecution attorneys and the federal court would report to the Medical Board the fact of his conviction in accordance with Business and Professions Code section 2236, subdivision (3).

32. Other than having one conversation with Vincent Valente, M.D., the investigator did not interview any persons who would cast respondent in a favorable light.

Additional Matters Critical to Resolution

33. Respondent owes the taxpayers of the United States more than two hundred fifty thousand dollars. In order for him to pay his debt to the United States treasury within a reasonable period of time, respondent will need to engage in delivery of professional services at a prevailing fee rate.

LEGAL CONCLUSIONS

1. Cause for discipline exists to revoke respondent's certificate as a physician and surgeon, pursuant to Business and Professions Code section 2236, by reason of the matters set forth in Factual Finding 4.

2. Cause for discipline exists to revoke respondent's certificate as a physician and surgeon, pursuant to Business and Professions Code section 2234,

subdivision (e) as it interacts with Code section 802.1, by reason of the matters set forth in Factual Finding 11.

3. Cause for discipline exists to suspend or revoke respondent's certificate as a physician and surgeon, pursuant to Business and Professions Code section 2234, subdivision (e), by reason of the matters set forth in Factual Finding 22.

Discussion

Respondent is a medical doctor who has had a successful and highly regarded medical practice over a period of approximately eight years in the Ukiah area. He has received an expensive medical education at Sanford University and Baylor University Medical Center. He served four years in the service of the United States Air Force as a Medical Corps officer.

In respondent's provision of important services to the Ukiah area community, he earned the respect and admiration by other medical doctors and health care professionals. He aided in the delivery, by his account, of more than 1,000 babies. He performed several hundred surgical operations. He treated thousands of patients, many of whom were Medi-Cal recipients or from families of Hispanic manual laboring persons.

Over the course of years from 1990 and mid 1998, respondent committed two sets of acts that deviated from acceptable standards, which in the summer of 1998 resulted in discipline against his certificate as a physician and surgeon. While facing the Medical Board disciplinary action, respondent was being prosecuted by the federal government for income tax evasion, which led to his conviction in June 1998.

Respondent gravely erred in failing to disclose to the Medical Board's investigator the fact of the conviction for federal income tax evasion. He was also wrong in not telling the United States Probation and Parole officer of the Medical Board's discipline.

Notwithstanding respondent's breach of the law regarding his obligations under the terms and conditions of probation for the initial discipline against his license, the weight of the evidence does not justify the absolute preclusion of respondent from returning to serve the medical needs of residents in the Ukiah area. Additionally, respondent should pursue the occupation that will enable him to satisfy his debt to the United States treasury.

The just and proper discipline against respondent's license would be to increase the period of probation to seven years and to impose additional medical education requirements upon him.

ORDER

The probation of the certificate as a physician and surgeon of Pablo G. Cortina M.D., as effective on August 24, 1998, is hereby revoked. However, probation is reinstated upon the following terms and conditions.

Certificate number G47561 issued to respondent Pablo Garza Cortina, M.D., is revoked; however, revocation is stayed and respondent is placed on probation for seven (7) years upon the following terms and conditions:

1. DISCLOSURE OF DISCIPLINE

Within 15 days after the effective date of this decision, the respondent shall provide the Division, or its designee, proof of service that respondent has served a true copy of this decision on the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent or where respondent is employed to practice medicine and on the Chief Executive Officer at every insurance carrier where malpractice insurance coverage is extended to respondent.

2. EDUCATION COURSE

Within 90 days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the Division or its designee for its prior approval an educational program or course to be designated by the Division, which shall not be less than 40 hours per year, for each year of probation. This program shall be in addition to the Continuing Medical Education requirements for re-licensure. Following the completion of each course, the Division or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of continuing medical education of which 40 hours were in satisfaction of this condition and were approved in advance by the Division or its designee.

3. ETHICS COURSE

Within 60 days of the effective date of this decision, respondent shall enroll in a course in Ethics approved in advance by the Division or its designee, and shall successfully complete the course during the first year of probation.

4. CLINICAL TRAINING PROGRAM

Within 90 days of the effective date of this decision, respondent shall submit to the Division or its designee for prior approval, a clinical training or educational program. The exact number of hours and specific content of the program shall be determined by the Division or its designee. Respondent shall successfully complete the training

program and may be required to pass an examination administered by the Division or its designee related to the program's contents.

5. ORAL CLINICAL OR WRITTEN EXAM

Respondent shall take and pass an oral clinical exam in a subject to be designated and administered by the Division, or its designee. This examination shall be taken within 90 days after the effective date of this decision. If respondent fails the first examination, respondent shall be allowed to take and pass a second examination, which may consist of a written as well as an oral examination. The waiting period between the first and second examinations shall be at least three months. If respondent fails to pass the first and second examinations, respondent may take a third and final examination after waiting a period of one year. Failure to pass the oral clinical examination within 18 months after the effective date of this decision shall constitute a violation of probation. The respondent shall pay the costs of all examinations.

If respondent fails to pass the first examination, respondent shall be suspended from the practice of medicine until a repeat examination has been successfully passed, as evidenced by written notice to respondent from the Division or its designee.

6. PSYCHIATRIC EVALUATION

By reason of Factual Finding 12, within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Division or its designee, respondent shall undergo a psychiatric evaluation (and psychological testing, if deemed necessary) by a Division-appointed psychiatrist, who shall furnish an evaluation report to the Division or its designee. The respondent shall pay the cost of the psychiatric evaluation.

If respondent is required by the Division or its designee to undergo psychiatric treatment, respondent shall within 30 days of the requirement notice submit to the Division for its prior approval the name and qualifications of a psychiatrist of respondent's choice. Respondent shall undergo and continue psychiatric treatment until further notice from the Division or its designee. Respondent shall have the treating psychiatrist submit quarterly status reports to the Division or its designee indicating whether the respondent is capable of practicing medicine safely.

7. MONITORING

Within 30 days of the effective date of this decision, respondent shall submit to the Division or its designee for its prior approval a plan of practice in which respondent's practice shall be monitored by another physician in respondent's field of practice, who shall provide periodic reports to the Division or its designee.

If the monitor resigns or is no longer available, respondent shall, within 15 days, move to have a new monitor appointed, through nomination by respondent and approval by the Division or its designee.

8. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders.

Other than the tax debt addressed by reason of his federal court conviction, respondent will pay all taxes he owes to state and local income tax agencies.

9. FAITHFUL HONORING CONVICTION SENTENCING ORDERS

In accordance with the United States District Court sentencing order, dated June 2, 1998, within five years of the effective date of this decision respondent will pay the full amount of the court fine (\$30,000) and the order of restitution (\$259,997) to the United States Internal Revenue Service.

Within fifteen (15) days of the effective date of this decision, respondent shall serve a copy of this decision by certified mail upon the United States Probation and Parole officer assigned to monitor him relative to his federal court conviction.

10. QUARTERLY REPORTS

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

11. PROBATION SURVEILLANCE PROGRAM COMPLIANCE

Respondent shall comply with the Division's probation surveillance program. Respondent shall, at all times, keep the Division informed of his addresses of business and residence which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the Division. Under no circumstances shall a post office box serve as an address of record.

Respondent shall also immediately inform the Division, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.

12. INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS DESIGNATED PHYSICIAN(S)

Respondent shall appear in person for interviews with the Division, its designee or its designated physician(s) upon request at various intervals and with reasonable notice.

13. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR IN-STATE NON-PRACTICE

In the event respondent should leave California to reside or to practice outside the State or for any reason should respondent stop practicing medicine in California, respondent shall notify the Division or its designee in writing within ten days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the Division or its designee shall be considered as time spent in the practice of medicine. Periods of temporary or permanent residence or practice outside California or of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary period.

14. COMPLETION OF PROBATION

Upon successful completion of probation, respondent's certificate shall be fully restored.

15. VIOLATION OF PROBATION

If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

16. COST RECOVERY

Respondent is hereby ordered to reimburse the Division the amount of four thousand (\$4,000) dollars within 90 days from the effective date of this decision for its investigative and prosecution costs. Failure to reimburse the Division's cost of its investigation and prosecution shall constitute a violation of the probation order, unless the Division agrees in writing to payment by an installment plan because of financial

hardship. The filing of bankruptcy by the respondent shall not relieve respondent of his responsibility to reimburse the Division for its investigative and prosecution costs.

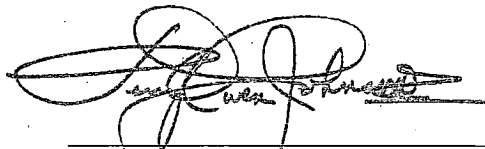
17. PROBATION COST

Respondent shall pay the costs associated with probation monitoring each and every year of probation. Such costs shall be payable to the Medical Board of California at the end of each fiscal year. Failure to pay such costs shall be considered a violation of probation.

18. LICENSE SURRENDER

Following the effective date of this decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his certificate to the Board. The Division reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

DATED: October 26th, 1999

A handwritten signature in dark ink, appearing to read "Perry O. Johnson", is written over a horizontal line.

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A

R E C E I V E D
PLEASANT HILL OFFICE

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

MAR 12 1999
Medical Board
Of California

In the Matter of the Accusation)
Against:)
)
PABLO G. CORTINA, M.D.)
Certificate No. G-47561)
)
Respondent.)
_____)

No. 13-94-40553

DECISION

The attached Stipulated Settlement and Decision is hereby adopted by the Division of Medical Quality as its Decision in the above-entitled matter.

This Decision shall become effective on August 24, 1998.

IT IS SO ORDERED July 24, 1998.

By: _____

IRA LUBELL
IRA LUBELL, M.D.
Chairperson, Panel A
Division of Medical Quality

MEDICAL BOARD OF CALIFORNIA

I do hereby certify that
this document is true
and correct copy of the
original on file in this
office.

Brenda Allen

SIGNED

3/10/99

DATE

Asst. Custodian of Records

TITLE

ATTACHMENT "A"

DANIEL E. LUNGREN, Attorney General
of the State of California
RONALD V. THUNEN, JR.
Deputy Attorney General
California Department of Justice
50 Fremont Street, Suite 300
San Francisco, California 94105
Telephone: (415) 356-6305
Facsimile: (415) 356-6257

Attorneys for Complainant

MEDICAL BOARD OF CALIFORNIA
I do hereby certify that
this document is true
and correct copy of the
original on file in this
office.

Brenda Allen 3/10/99
SIGNED DATE

Asst. Custodian of Records
TITLE

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	Case No. 13-94-40553
Against:)	
PABLO G. CORTINA, M.D.)	OAH No. N1998050231
1165 South Dora, Suite E-1)	
Ukiah, CA 95482)	STIPULATED SETTLEMENT
)	AND DECISION
License No. G47561)	
)	
- Respondent.)	

In the interest of a prompt and speedy settlement of
this matter, consistent with the public interest and the
responsibility of the Division of Medical Quality, Medical Board
of California, Department of Consumer Affairs ("Division") the
parties hereby agree to the following Stipulated Settlement and
Decision which will be submitted to the Division for its approval
and adoption as the final disposition of the Accusation.

PARTIES

1. Complainant Ron Joseph is the Executive Director
of the Medical Board of California who brought this action solely
in his official capacity and is represented in this matter by

1 Daniel E. Lungren, Attorney General of the State of California,
2 by Ronald V. Thunen, Jr., Deputy Attorney General.

3 2. Respondent Pablo G. Cortina, M.D. ("respondent") is
4 represented in this matter by attorney Christopher R. Miller,
5 Miller & Mailliard, LLP, whose address is 250 "D" Street, Suite
6 200, Santa Rosa, California 95402.

7 3. At all times relevant herein, respondent has been
8 licensed by the Medical Board of California under License No.
9 G47561.

10 JURISDICTION

11 4. Accusation, No. 13-94-40553, was filed before the
12 Division and is currently pending against respondent. The
13 Accusation, together with all other statutorily required
14 documents, was duly served on the respondent on February 4, 1998,
15 and respondent timely filed his Notice of Defense (contesting the
16 Accusation). A copy of Accusation No. 13-94-40553 is attached as
17 an Exhibit and incorporated herein by reference.

18 ADVISEMENT AND WAIVERS

19 5. Respondent has fully and completely discussed with
20 his counsel the nature of the charges alleged in the Accusation
21 and the effects of this stipulation.

22 6. Respondent understands that the charges and
23 allegations in the Accusation, if proven at a hearing, constitute
24 cause for imposing discipline upon his license. Respondent is
25 fully aware of his legal rights and that, but for this
26 Stipulation, he would be entitled: 1) to a hearing on the charges
27 and allegations in the Accusation; 2) to be represented by

1 counsel, at his own expense, in all proceedings in this matter;
2 3) to confront and cross-examine the witnesses against him; 4) to
3 present evidence on his own behalf and to the issuance of
4 subpoenas to compel the attendance of witnesses and the
5 production of documents; 5) to reconsideration and appeal of an
6 adverse decision; and 6) all other rights accorded pursuant to
7 the California Administrative Procedure Act and other applicable
8 laws.

9 7. With these rights in mind, respondent freely,
10 voluntarily, knowingly and intelligently waives and gives up each
11 and every right set forth above.

12 CULPABILITY

13 8. Respondent admits the truth of each and every
14 allegation in Accusation No. 13-94-40553.

15 9. Respondent agrees that his license is subject to
16 discipline pursuant to section 2234 of the Code. Respondent
17 agrees to be bound by the Division's imposition of discipline as
18 set forth in the Order below.

19 CIRCUMSTANCES IN MITIGATION

20 10. Respondent has never been the subject of any
21 disciplinary action. He is admitting responsibility at an early
22 stage in the proceedings.

23 RESERVATION

24 11. The admissions made by respondent herein are only
25 for the purposes of this proceeding, or any other proceedings in
26 which the Division of Medical Quality, Medical Board of
27 California or other professional licensing agency is involved,

1 and shall not be admissible in any other criminal or civil
2 proceedings.

3 CONTINGENCY

4 12. This stipulation shall be subject to the approval
5 of the Division. Respondent understands and agrees that Board
6 staff and counsel for complainant may communicate directly with
7 the Division regarding this stipulation and settlement, without
8 notice to or participation by respondent or his counsel. If the
9 Division fails to adopt this stipulation as its Order, the
10 stipulation shall be of no force or effect, it shall be
11 inadmissible in any legal action between the parties, and the
12 Division shall not be disqualified from further action in this
13 matter by virtue of its consideration of this stipulation.

14 13. In consideration of the foregoing admissions and
15 stipulations, the parties agree that the Division shall, without
16 further notice or formal proceeding, issue and enter the
17 following Disciplinary Order:

18 DISCIPLINARY ORDER

19 IT IS HEREBY ORDERED that License No. G47561 issued to
20 Pablo G. Cortina is revoked. However, the revocation is stayed
21 and respondent is placed on probation for two years on the
22 following terms and conditions. Within 15 days after the
23 effective date of this decision the respondent shall provide the
24 Division, or its designee, proof of service that respondent has
25 served a true copy of this decision on the Chief of Staff or the
26 Chief Executive Officer at every hospital where privileges or
27 membership are extended to respondent or where respondent is

1 employed to practice medicine and on the Chief Executive Officer
2 at every insurance carrier where malpractice insurance coverage
3 is extended to respondent.

4 1. EDUCATION COURSE Within ninety (90) days of the
5 effective date of this decision, and on an annual basis
6 thereafter, respondent shall submit to the Division or its
7 designee for its prior approval an educational program or course
8 to be designated by the Division, which shall not be less than 40
9 hours per year, for each year of probation. This program shall
10 be in addition to the Continuing Medical Education requirements
11 for re-licensure. Following the completion of each course, the
12 Division or its designee may administer an examination to test
13 respondent's knowledge of the course. Respondent shall provide
14 proof of attendance for 65 hours of continuing medical education
15 of which 40 hours were in satisfaction of this condition and were
16 approved in advance by the Division or its designee.

17 2. ETHICS COURSE Within sixty (60) days of the
18 effective date of this decision, respondent shall enroll in a
19 course in Ethics approved in advance by the Division or its
20 designee, and shall successfully complete the course during the
21 first year of probation.

22 3. MONITORING Within thirty (30) days of the
23 effective date of this decision, respondent shall submit to the
24 Division or its designee for its prior approval a plan of
25 practice in which respondent's practice shall be monitored by
26 another physician in respondent's field of practice, who shall
27 provide periodic reports to the Division or its designee.

1 If the monitor resigns or is no longer available,
2 respondent shall, within fifteen (15) days, move to have a new
3 monitor appointed, through nomination by respondent and approval
4 by the Division or its designee. If respondent successfully
5 completes one year of monitored practice while on probation,
6 respondent may petition for termination of this condition.

7 Pursuant to Business and Professions Code section 2307,
8 if respondent successfully completes one year of probation and is
9 in full compliance with all conditions of probation, respondent
10 may petition for modification or termination of probation.

11 4. OBEY ALL LAWS Respondent shall obey all federal,
12 state and local laws, all rules governing the practice of
13 medicine in California, and remain in full compliance with any
14 court ordered criminal probation, payments and other orders.

15 5. QUARTERLY REPORTS Respondent shall submit
16 quarterly declarations under penalty of perjury on forms provided
17 by the Division, stating whether there has been compliance with
18 all the conditions of probation.

19 6.. PROBATION SURVEILLANCE PROGRAM COMPLIANCE Respondent
20 shall comply with the Division's probation surveillance program.
21 Respondent shall, at all times, keep the Division informed of his
22 addresses of business and residence which shall both serve as
23 addresses of record. Changes of such addresses shall be
24 immediately communicated in writing to the Division. Under no
25 circumstances shall a post office box serve as an address of
26 record.

27 / / /

1 Respondent shall also immediately inform the Division,
2 in writing, of any travel to any areas outside the jurisdiction
3 of California which lasts, or is contemplated to last, more than
4 thirty (30) days.

5 7. INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS

6 DESIGNATED PHYSICIAN(S) Respondent shall appear in person for
7 interviews with the Division, its designee or its designated
8 physician(s) upon request at various intervals and with
9 reasonable notice.

10 8. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR IN-STATE NON-

11 PRACTICE In the event respondent should leave California to
12 reside or to practice outside the State or for any reason should
13 respondent stop practicing medicine in California, respondent
14 shall notify the Division or its designee in writing within ten
15 (10) days of the dates of departure and return or the dates of
16 non-practice within California. Non-practice is defined as any
17 period of time exceeding thirty days in which respondent is not
18 engaging in any activities defined in Sections 2051 and 2052 of
19 the Business and Professions Code. All time spent in an
20 intensive training program approved by the Division or its
21 designee shall be considered as time spent in the practice of
22 medicine. Periods of temporary or permanent residence or
23 practice outside California or of non-practice within California,
24 as defined in this condition, will not apply to the reduction of
25 the probationary period.

26 Any respondent disciplined under Business and
27 Professions Code section 2305 (sister-state discipline) may

1 petition for modification of penalty; 1) if the other state's
2 discipline terms are modified, terminated or reduced; and 2) if
3 at least one year has elapsed from the effective date of the
4 California discipline.

5 9. COMPLETION OF PROBATION Upon successful completion
6 of probation, respondent's certificate shall be fully restored.

7 10. VIOLATION OF PROBATION If respondent violates
8 probation in any respect, the Division, after giving respondent
9 notice and the opportunity to be heard, may revoke probation and
10 carry out the disciplinary order that was stayed. If an
11 accusation or petition to revoke probation is filed against
12 respondent during probation, the Division shall have continuing
13 jurisdiction until the matter is final, and the period of
14 probation shall be extended until the matter is final.

15 11. COST RECOVERY The respondent is hereby ordered to
16 reimburse the Division the amount for its investigative and
17 prosecution costs in the amount of \$4,000, payable in two equal
18 installments. The first installment of \$2,000 shall be paid
19 within ninety (90) days of the effective date of this decision.
20 The second installment shall be due and payable on the first
21 anniversary of the effective date of this decision. In no event
22 will respondent petition for early termination of probation until
23 the final installment has been paid. Failure to reimburse the
24 Division's cost of investigation and prosecution shall constitute
25 a violation of the probation order, unless the Division agrees in
26 writing to payment by an installment plan because of financial
27 hardship. The filing of bankruptcy by the respondent shall not

1 relieve the respondent of his responsibility to reimburse the
2 Division for its investigative and prosecution costs.

3 12. PROBATION COSTS Respondent shall pay the costs
4 associated with probation monitoring each and every year of
5 probation, which are currently set at \$2,304, but may be adjusted
6 on an annual basis. Such costs shall be payable to the Division
7 of Medical Quality and delivered to the designated probation
8 surveillance monitor at the beginning of each calendar year.
9 Failure to pay costs within 30 days of the due date shall
10 constitute a violation of probation.

11 13. LICENSE SURRENDER Following the effective date of
12 this decision, if respondent ceases practicing due to retirement,
13 health reasons or is otherwise unable to satisfy the terms and
14 conditions of probation, respondent may voluntarily tender his
15 certificate to the Board. The Division reserves the right to
16 evaluate the respondent's request and to exercise its discretion
17 whether to grant the request, or to take any other action deemed
18 appropriate and reasonable under the circumstances. Upon formal
19 acceptance of the tendered license, respondent will not longer be
20 subject to the terms and conditions of probation.

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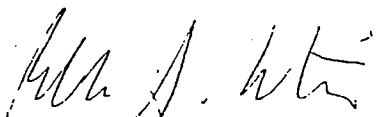
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ACCEPTANCE


I have carefully read the above Stipulated Settlement and Decision. I understand the effect this stipulation will have on my license to practice medicine and agree to be bound thereby. I enter into this Stipulated Settlement and Decision knowingly, voluntarily, freely and intelligently.

DATED: 20 June 98


PABLO G. CORTINA, M.D.
Respondent

I have fully discussed with respondent Pablo G. Cortina the terms and conditions and other matters contained in the above Stipulated Settlement and Decision and approve its form and content.

DATED: July 1, 1998


CHRISTOPHER R. MILLER, ESQ.
Attorney for Respondent

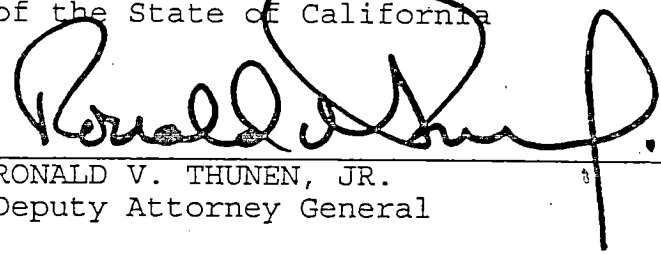
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ENDORSEMENT

The foregoing Stipulated Settlement and Decision is hereby respectfully submitted for consideration of the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs.

DATED: 6 July 1981

DANIEL E. LUNGREN, Attorney General
of the State of California



RONALD V. THUNEN, JR.
Deputy Attorney General

Attorneys for Complainant

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 RONALD V. THUNEN, JR.
Deputy Attorney General
3 California Department of Justice
50 Fremont Street, Suite 300
4 San Francisco, California 94105
Telephone: (415) 356-6305
5 Facsimile: (415) 356-6257

6 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 4 19 98
BY Natlie Johnson ANALYST

7
8 BEFORE THE
DIVISION OF MEDICAL QUALITY
9 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation) Case No. 13-94-40553
Against:)
12)
PABLO G. CORTINA, M.D.) ACCUSATION
13 1165 South Dora, Suite E-1)
Ukiah, CA 95482)
14) MEDICAL BOARD OF CALIFORNIA
License No. G47561) I do hereby certify that
15) this document is true
Respondent.) and correct copy of the
16) original on file in this
office.

17
18 The Complainant alleges:

Brenda Allen 3/10/99
SIGNED DATE

19 PARTIES

Asst. Custodian of Records
TITLE

20 1. Complainant, Ron Joseph, is the Executive Director
21 of the Medical Board of California (hereinafter the "Board") and
22 brings this accusation solely in his official capacity.

23 2. On or about June 14, 1982, License No. G47561 was
24 issued by the Board to Pablo G. Cortina (hereinafter
25 "respondent"), and at all times relevant to the charges brought
26 herein, this license has been in full force and effect. Unless
27 renewed, it will expire on August 31, 1999. In addition,

1 respondent has been issued Physician Assistant Supervisor
2 authorization SA 17344. Although this authorization expired on
3 August 31, 1994, the expiration of a license does not deprive
4 either the Medical Board or the Physician's Assistant Examining
5 Committee of jurisdiction during the period within which the sa
6 authorization could be renewed. Pursuant to Business and
7 Professions Code section 3524, an expired approval to supervise
8 physician's assistant may be renewed within five years of
9 expiration.

10 JURISDICTION

11 3. This accusation is brought before the Division c
12 Medical Quality of the Medical Board of California, Department
13 Consumer Affairs (hereinafter the "Division"), under the
14 authority of the following sections of the California Business
15 and Professions Code (hereinafter "Code"):

16 A. Section 2227 of the Code provides:

17 (a) A licensee whose matter has been heard by an
18 administrative law judge of the Medical Quality Hearing
19 Panel as designated in Section 11371 of the Government
20 Code, or whose default has been entered, and who is
21 found guilty may, in accordance with the provisions of
22 this chapter:

23 (1) Have his or her license revoked
24 upon order of the division.

25 (2) Have his or her right to practice
26 suspended for a period not to exceed one year
27 upon order of the division.

1 (3) Be placed on probation and be
2 required to pay the costs of probation
3 monitoring upon order of the division.

4 (4) Be publicly reprimanded by the
5 division.

6 (5) Have any other action taken in
7 relation to discipline as the division or an
8 administrative law judge may deem proper.

9 (b) Any matter heard pursuant to subdivision (a),
10 except for warning letters,³ medical review or advisory
11 conferences, or other matters made confidential or
12 privileged by existing law, is deemed public, and shall
13 be made available to the public by the board.

14 B. Section 2234 of the Code provides that
15 unprofessional conduct includes, but is not limited to, the
16 following:

17 (a) Violating or attempting to violate, directly or
18 indirectly, or assisting in or abetting the violation of, or
19 conspiring to violate, any provision of this chapter.

20 (b) Gross negligence.

21 (c) Repeated negligent acts.

22 (d) Incompetence.

23 (e) The commission of any act involving dishonesty or
24 corruption which is substantially related to the
25 qualifications, functions, or duties of a physician and
26 surgeon.

27 / / /

1 (f) Any action or conduct which would have warranted
2 the denial of a certificate.

3 C. Section 125.3 of the Code provides, in part, that
4 the Board may request the administrative law judge to direct
5 any licensee found to have committed a violation or
6 violations of the licensing act, to pay the Board a sum not
7 to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 D. Section 16.01 of the 1997/1998 Budget Act of the
10 State of California provides, in pertinent part, that:

11 (a) no funds appropriated by this act may be
12 expended to pay any Medi-Cal claim for any service
13 performed by a physician while that physician's license
14 is under suspension or revocation due to a disciplinary
15 action of the Medical Board of California; and,

16 (b) no funds appropriated by this act may be
17 expended to pay any Medi-Cal claim for any surgical
18 service or other invasive procedure performed on any
19 Medi-Cal beneficiary by a physician if that physician
20 has been placed on probation due to a disciplinary
21 action of the Medical Board of California related to
22 the performance of that specific service or procedure
23 on any patient, except in any case where the Board
24 makes a determination during its disciplinary process
25 that there exist compelling circumstances that warrant
26 continued Medi-Cal reimbursement during the
27 probationary period.

1 FIRST CAUSE FOR DISCIPLINE

2 Patient M.B.

3 4. Following delivery of her second child on October
4 26, 1990, this patient elected a tubal ligation, which was
5 performed by respondent on October 27, 1990. Although respondent
6 transected the right fallopian tube, he failed to correctly
7 identify the left fallopian-tube, and it was neither transected
8 nor ligated. Respondent's failure to locate and confirm the
9 identity of the left fallopian tube constitutes a departure from
10 the standard of care. Moreover, it does not appear that
11 respondent followed up on this matter postoperatively in order to
12 determine whether the pathology report confirmed the successful
13 transection of the left fallopian tube, and his consequent
14 failure to notify the patient that the surgery was incomplete.
15 The patient subsequently became pregnant and delivered another
16 child. Respondent's conduct as described above constitutes
17 negligence within the meaning of Business and Professions Code
18 section 2234(c); coupled with the acts and omissions described in
19 the second cause for discipline below, these acts constitute
20 repeated acts of negligence within the meaning of Business and
21 Professions Code section 2234(c).

22 SECOND CAUSE FOR DISCIPLINE

23 Patient B.R.

24 5. Respondent first examined this patient on August
25 27, 1992, when the patient was complaining of persistent pelvic
26 pain. She presented with a history which included a right
27 salpingectomy having been performed in 1986, following discovery

1 of an ectopic pregnancy; a diagnosis of endometriosis having been
2 made in 1991; and a left salpingectomy having been performed
3 earlier in 1992. Respondent recommended a total hysterectomy
4 with a bilateral oophorectomy.

5 6. After further discussion, respondent performed a
6 total hysterectomy with left oophorectomy on October 9, 1992.
7 The right ovary was not removed at this time by reason of the
8 patient's desire to retain one ovary and respondent's belief that
9 it was the left ovary and not the right ovary which was the cause
10 of the patient's pain. On October 17th, the patient was seen in
11 a hospital emergency room complaining of pelvic pain. On October
12 21st, the patient was evaluated by respondent both for the pelvic
13 pain and because the hospital emergency room had made a diagnosis
14 of a pelvic hematoma. On November 11, 1992, respondent performed
15 a vaginal evacuation of hematoma. Thereafter, the patient once
16 again complained of pelvic pain and on January 8, 1993,
17 respondent performed a diagnostic laparoscopy where he observed a
18 three centimeter cyst on the right ovary, as well as evidence of
19 endometriosis. He performed lysis of adhesions, drainage of the
20 cyst, and placement of TC-7.

21 7. The patient continued to complain of severe pelvic
22 pain. Following the performance of an ultrasound study on May 4,
23 1993, respondent performed a laparotomy to remove the right ovary
24 on May 28, 1993. Again, this did not resolve the patient's
25 pelvic pain problem, and a CT scan was performed on July 13,
26 1993. This scan revealed a small cyst two centimeters in the
27 / / /

1 area normally occupied by the right ovary, and possible residual
2 endometriosis.

3 8. On August 26, 1993, respondent performed another
4 diagnostic laparoscopy. During this procedure, filmy adhesions
5 from the large and small bowel to the cul-de-sac in both pelvic
6 sidewalls were lysed. There were several gun powder-type lesions
7 in the cul-de-sac and also on both pelvic sidewalls which were
8 biopsied. Another ultrasound was performed on October 19, 1993
9 at the direction of another physician. A 2.4 centimeter mass
10 appeared to be present in the region where the right ovary would
11 normally be found and was identified as a possible endometrioma.
12 Accordingly, a laparotomy was performed on October 29, 1993 to
13 locate and remove any remnant of the right ovary which was found
14 to be present. A remnant described as 1 centimeter by 1
15 centimeter was found adherent to the right pelvic sidewall and
16 was removed.

17 9. Once again, the pain persisted, and an ultrasound
18 performed on January 18, 1994 demonstrated a 3 x 3½ centimeter
19 mass in the right side of the pelvis in the area where the ovary
20 would normally be. Accordingly, respondent performed a
21 diagnostic laparoscopy on January 21, 1994, but was unable to
22 locate the reported mass. Approximately one week later, another
23 physician successfully located and removed the remaining remnant
24 of the right ovary which was found to be located
25 retroperitoneally.

26 / / /

27 / / /

10. Respondent's failure to locate and remove the ovarian remnant in January 1994 constitutes an extreme departure from the standard of care, and a separate cause for discipline pursuant to Business and Professions Code section 2234(b).

11. Collectively, respondent's departures from the standard of care in the treatment of patients M.B. and B.R. constitute repeated acts of negligence within the meaning of Business and Professions Code section 2234(c).

PRA YER

WHEREFORE, the complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Division issue a decision:

1. Revoking or suspending License Number G47561,
heretofore issued to respondent Pablo G. Cortina;

2. Revoking, suspending or denying approval of the respondent's authority to supervise physician's assistants, pursuant to Business and Professions Code section 3527;

3. Ordering respondent to pay the Division the actual and reasonable costs of the investigation and enforcement of this case;

4. If probation is ordered as a part of the decision herein, that respondent be required to pay probation costs as provided in Business and Professions Code section 2227;

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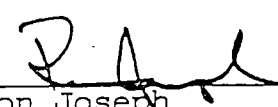
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1 5. Taking such other and further action as the
2 Division deems necessary and proper.

3 DATED: February 4, 1998

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Ron Joseph
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

accuse [115 rev]

1 BILL LOCKYER
Attorney General
2 RONALD V. THUNEN, JR., Bar No. 041145
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, California 94102-3664
Telephone: (415) 703-5531
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 15 19 98
BY Victor L. Chong **ANALYST**

7
8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation)
Against:)

12 **PABLO G. CORTINA, M.D.**)
13 240-A Hospital Drive)
14 Ukiah, CA 95482)

15 License No. G47561)

16 Respondent.)

Case No. D1-1994 40553

**ACCUSATION AND PETITION
TO REVOKE PROBATION**

17
18
19 The Complainant alleges:

20 **PARTIES**

21 1. Complainant, Ron Joseph, is the Executive Director
22 of the Medical Board of California (hereinafter the "Board") and
23 brings this accusation solely in his official capacity.

24 2. On or about June 14, 1982, License No. G47561 was
25 issued by the Board to Pablo G. Cortina, M.D. (hereinafter
26 "respondent"). This license is renewed and current with an
27 expiration date of August 31, 1999. Disciplinary action has

1 previously been taken against this license as follows: On
2 February 4th, 1998, an Accusation was filed against respondent,
3 which was resolved by a decision effective August 24th, 1998,
4 revoking respondent's license. However, revocation was stayed on
5 two years' probation with terms and conditions. As is explained
6 in greater detail below, Dr. Cortina did not, in fact, commence
7 his supervised probation in August 1998; instead, his period of
8 probation was tolled on his representation that he was leaving
9 the state for four to six months and would not be practicing
10 medicine during that time.

11 JURISDICTION

12 3. This accusation is brought before the Division of
13 Medical Quality of the Medical Board of California, Department of
14 Consumer Affairs (hereinafter the "Division"), under the
15 authority of the following sections of the California Business
16 and Professions Code (hereinafter "Code"):

17 A. Section 2227 of the Code provides:

18 (a) A licensee whose matter has been heard by an
19 administrative law judge of the Medical Quality
20 Hearing Panel as designated in Section 11371 of
21 the Government Code, or whose default has been
22 entered, and who is found guilty may, in
23 accordance with the provisions of this chapter:

24 (1) Have his or her license revoked upon order of
25 the division.

26 (2) Have his or her right to practice suspended
27 for a period not to exceed one year upon

order of the division.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

(4) Be publicly reprimanded by the division.

(5) Have any other action taken in relation to discipline as the division or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board.

(B) Section 2234 of the Code provides that unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a

1 physician and surgeon.

2 (f) Any action or conduct which would have warranted
3 the denial of a certificate.

4 (C) Section 125.3 of the Code provides, in part, that
5 the Board may request the administrative law judge to direct any
6 licensee found to have committed a violation or violations of
7 the licensing act, to pay the Board a sum not to exceed the
8 reasonable costs of the investigation and enforcement of the
9 case.

10 (D) Welfare and Institutions Code section 14124.12
11 provides, in part, that a physician whose license has been placed
12 on probation by the Medical Board shall not be reimbursed by the
13 Medi-Cal Program for "the type of surgical service or invasive
14 procedure that gave rise to the probation."

15 (E) Business and Professions section 802.1 provides
16 the following:

17 (a) A physician and surgeon shall report any of the
18 following to the Medical Board of California in
19 writing within 30 days:

20 (1) The bringing of an indictment or information
21 charging a felony against the physician and
22 surgeon.

23 (2) The conviction of the physician and surgeon,
24 including any verdict of guilty, or plea of
25 guilty or no contest, of any felony.

26 (b) Failure to make a report required by this section
27 shall be a public offense punishable by a fine not

1 to exceed five thousand dollars (\$5,000).

2 (F) Section 2236 of the Code provides the following:

3 (a) The conviction of any offense substantially
4 related to the qualifications, functions, or
5 duties of a physician and surgeon constitutes
6 unprofessional conduct within the meaning of this
7 chapter. The record of conviction shall be
8 conclusive evidence only of the fact that the
9 conviction occurred.

10 (b) The district attorney, city attorney, or other
11 prosecuting agency shall notify the Division of
12 Medical Quality of the pendency of an action
13 against a licensee charging a felony or
14 misdemeanor immediately upon obtaining information
15 that the defendant is a licensee. The notice
16 shall identify the licensee and described the
17 crimes charged and the facts alleged. The
18 prosecuting agency shall also notify the clerk of
19 the court in which the action is pending that the
20 defendant is a licensee, and the clerk shall
21 record prominently in the file that the defendant
22 holds a license as a physician and surgeon.

23 (c) The clerk of the court in which a licensee is
24 convicted of a crime shall, within 48 hours after
25 the conviction, transmit a certified copy of the
26 record of conviction to the board. The division
27 may inquire into the circumstances surrounding the

1 commission of a crime in order to fix the degree
2 of discipline or to determine if the conviction is
3 of an offense substantially related to the
4 qualifications, functions, or duties of a
5 physician and surgeon.

6 (d) A plea or verdict of guilty or a conviction after
7 a plea of nolo contendere is deemed to be a
8 conviction within the meaning of this section and
9 Section 2236.1. The record of conviction shall be
10 conclusive evidence of the fact that the
11 conviction occurred.

12 **FIRST CAUSE FOR DISCIPLINE**

13 4. By information filed December 31, 1997, respondent
14 was charged, in the United States District Court for the Northern
15 District of California, in action No. CR97-00368VRW, with a
16 violation of 26 U.S.C., section 7206(1) - filing a false tax
17 return under penalties of perjury, a felony. Notwithstanding the
18 reporting requirement of Business and Professions Code, section
19 802.1, respondent did not report this fact to the Medical Board
20 of California.

21 5. Respondent entered a guilty plea to these charges
22 on June 2, 1998, and was convicted. Again, respondent failed to
23 report this fact to the Medical Board of California.

24 6. As noted above, as a result of prior disciplinary
25 action, respondent was scheduled to commence two years of license
26 probation on August 24th, 1998. On that date, the respondent
27 communicated with a representative of the Probation Department of

1 the Medical Board. He did not disclose that he had been
2 convicted of filing a false tax return. On September 9th, 1998,
3 respondent telephoned a representative of the Medical Board's
4 Probation Department and stated that he wished to take a leave of
5 absence from the practice of medicine; that he was going to his
6 home in Texas to be with his mother and to get away from the
7 practice of medicine from four to six months. Again, the
8 respondent did not disclose that he had pleaded guilty in June to
9 the count of filing a false tax return.

10 7. In fact, the respondent knew full well that he
11 would not be able to go to El Paso, Texas to spend four to six
12 months with his mother; instead, he was fully aware that he had
13 been ordered by the United States District Court to surrender to
14 a United States Marshal at noon on September 11th, 1998 to
15 commence serving a one year term of imprisonment (including six
16 months of actual confinement, and six months of community
17 confinement) at that time.

18 8. Respondent's failure to report to the Medical
19 Board in January 1998 that he had been charged with a felony in
20 federal court, and the subsequent failure to report his
21 conviction of that offense constitutes separate and several bases
22 for disciplinary action in that the failure to make such a report
23 constitutes unprofessional conduct within the meaning of section
24 2234.

25 9. Respondent's false statement to the Medical Board
26 on September 9th that he was going to be with his mother in Texas
27 for the next four to six months constitutes an act of dishonesty

1 within the meaning of section 2234(e) and is a cause for
2 disciplinary action.

3 10. Respondent's June 1998 conviction for filing a
4 false tax return constitutes a separate cause for disciplinary
5 action pursuant to Business and Professions Code, section 2236 in
6 that the filing of a false federal tax return is an offense
7 substantially related to the qualifications, functions, or duties
8 of a physician and surgeon.

9 **PRAYER**

10 **WHEREFORE**, the complainant requests that a hearing be
11 held on the matters herein alleged, and that following the
12 hearing, the Division issue a decision:

13 1. Revoking or suspending License Number G47561,
14 heretofore issued to respondent Pablo G. Cortina;

15 2. Revoking, suspending or denying approval of the
16 respondent's authority to supervise physician's assistants,
17 pursuant to Business and Professions Code section 3527;

18 3. Ordering respondent to pay the Division the actual
19 and reasonable costs of the investigation and enforcement of this
20 case;


21 4. If probation is ordered as a part of the decision
22 herein, that respondent be required to pay probation costs as
23 provided in Business and Professions Code section 2227;

24 5. Revoking the probation previously ordered and
25 implementing the order of revocation set forth in the Division's
26 prior decision of August 24th, 1998;

27 / / /

1 6. Taking such other and further action as the
2 Division deems necessary and proper.

3 DATED: July 15, 1999.

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6 
7 Ron Joseph
8 Executive Director
9 Medical Board of California
10 Department of Consumer Affairs
11 State of California

Complainant

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